

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FRANCOIS GUGUMUS

Appeal No. 2001-0796
Application No. 08/911,199

ON BRIEF

Before OWENS, LIEBERMAN, and NAGUMO, Administrative Patent Judges.

LIEBERMAN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the decision of the examiner refusing to allow claims 1, 3 through 7 and 9 through 16, which are all of the claims pending in this application.

THE INVENTION

The invention is directed to a stabilizer composition containing a specific hindered amine light stabilizing compound having a specific formula in combination with an organic

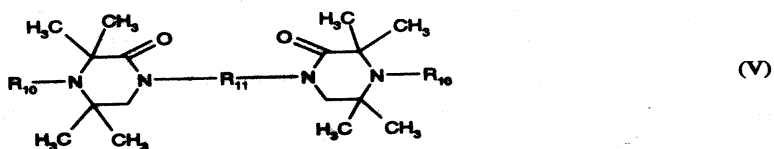
salt of zinc or magnesium. The invention further requires the presence of a UV absorber or a pigment or both. Additional limitations are disclosed in the following illustrative claim.

THE CLAIM

Claim 1 is illustrative of appellant's invention and is reproduced below:

1. A stabilizer mixture containing
A) either

(A5) at least one compound of the formula (V)



wherein the radicals R_{10} , independently of one another are hydrogen, C_1 - C_8 alkyl, $-O^{\cdot}$, $-CH_2CN$, C_3 - C_6 alkenyl, C_7 - C_9 phenylalkyl, C_7 - C_9 phenylalkyl which is substituted on the phenyl radical by C_1 - C_4 alkyl; or C_1 - C_8 acyl; and

R_{11} is C_2 - C_{22} alkylene; or

(A7) at least one compound of the formula (VIII)



wherein R_{16} is C_1 - C_{24} alkyl, and

R_{17} has one of the definitions given for R_{10} ; and

B) an organic salt of zinc or magnesium; and

C) either

(C1) an UV absorber or

(C2) a pigment or

(C3) an UV absorber and a pigment.

THE REFERENCES OF RECORD

As evidence of obviousness, the examiner relies upon the following references:

Lai et al. (Lai)	4,190,571	Feb. 26, 1980
Kelkenberg et al. (Kelkenberg)	4,356,307	Oct. 26, 1982
Gugumus	4,929,652	May 29, 1990

THE REJECTION

Claims 1, 3 through 7 and 9 through 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combined teachings of Gugumus, Kelkenberg, and Lai.

OPINION

We have carefully considered all of the arguments advanced by the appellant and the examiner, and agree with the appellant that the rejection of the claims is not well founded. Accordingly, we reverse.

The Rejections under Section 103

“[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability.” See In re Oetiker, 977

F.2d1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). The examiner relies upon a combination of three references to establish a prima facie case of obviousness with respect to the claimed subject matter.

Even if the examiner were to have established a prima facie case of obviousness, which is not reflected in the record before us, we determine that the evidence of record is sufficient to rebut any such prima facie case of obviousness which could be based on the references before us, alone or in combination.

The evidence presented in the specification in Examples 1 and 2 is directed to the time ($T_{0.1}$ measured) needed to reach a carbonyl extinction of 0.1. See specification, page 29. The data properly compares species of formula V and VIII with a hindered amine light stabilizer of Gugumus which is the closest art of record, in combination with each of the components required by the claimed subject matter. The evidence presented shows about a 50% increase in the hours need to reach a carbonyl extinction of 0.1 in polypropylene homopolymer films containing compositions within the scope of the claimed subject matter. See Tables 1 to 3. Based upon the narrow scope of the claimed subject matter, we determine that the evidence discloses results which are both unusual and unexpected. Accordingly, the rejection over the references of record is reversed.

DECISION

The rejection of claims 1, 3 through 7 and 9 through 16 under 35 U.S.C.
§ 103(a) as being unpatentable over the combined teachings of Gugumus, Kelkenberg and
Lai is reversed.

The decision of the examiner is reversed.

REVERSED

TERRY J. OWENS
Administrative Patent Judge

PAUL LIEBERMAN
Administrative Patent Judge

MARK NAGUMO
Administrative Patent Judge

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Appeal No. 2001-0796
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